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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4343

12 **THOMAS JOHN DIRKES**
13 **P. O. Box 7113**
Stateline, CA 89446

A C C U S A T I O N

14 **Pharmacist License No. RPH 38648**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about August 21, 1984, the Board of Pharmacy issued Pharmacist License
23 Number RPH 38648 to Thomas John Dirkes (Respondent). The Pharmacist License expired on
24 May 31, 2012, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

1 (d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
2 certificate of licensure for any violation of the terms and conditions of probation. Upon
3 satisfactory completion of probation, the board shall convert the probationary certificate to a
4 regular certificate, free of conditions.

5 (e) The proceedings under this article shall be conducted in accordance with Chapter 5
6 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
7 shall have all the powers granted therein. The action shall be final, except that the propriety of
8 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
9 Civil Procedure."

10 5. Section 4301 of the Code states, in pertinent part, that:

11 "The board shall take action against any holder of a license who is guilty of unprofessional
12 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
13 Unprofessional conduct shall include, but is not limited to, any of the following:

14 (a) Gross immorality.

15 ...

16 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
18 whether the act is a felony or misdemeanor or not.

19 (g) Knowingly making or signing any certificate or other document that falsely represents
20 the existence or nonexistence of a state of facts.

21 ...

22 (j) The violation of any of the statutes of this state, or any other state, or of the United
23 States regulating controlled substances and dangerous drugs.

24 (k) The conviction of more than one misdemeanor or any felony involving the use,
25 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
26 combination of those substances.

27 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
28 of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision. The board may take action when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.

16 ...

17 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violation of or conspiring to violate any provision or term of this chapter or of the applicable
19 federal and state laws and regulations governing pharmacy, including regulations established by
20 the board or by any other state or federal regulatory agency."

21 6. Section 4059 of the Code states, in pertinent part, that:

22 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
23 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
24 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
25 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
26 3640.7.

27 ...".

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1 7. Section 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 8. “Tadalafil”, commonly known as “Cialis”, is a dangerous drug under Code section
6 4022 and prescribed for erectile dysfunction.

7 **FIRST CAUSE FOR DISCIPLINE**
8 **(Unprofessional Conduct- Violation of Statutes Re Dangerous Drugs and Board**
9 **Regulations)**

9 9. Respondent is subject to disciplinary action for unprofessional conduct under Code
10 section 4301, subdivisions (j) and (o), because he violated Code section 4059 (a).

11 10. On or about March 4, 2011, Respondent fraudulently in-put cash register transactions
12 at Raley’s Pharmacy, his employer, for two (2) prescriptions of Cialis 5 mg tablets (30 tablets
13 each) in the names of patients “M.B.” and “T.B.”. Respondent then dispensed the two
14 prescriptions. At all relevant times, Respondent knew that no physician or other applicable
15 professional had prescribed any such medication for “M.B.” or “T.B.”. In fact, Respondent
16 intended said medication for his own personal use and placed the dispensed medications among
17 his personal belongings.

18 **SECOND CAUSE FOR DISCIPLINE**
19 **(Unprofessional Conduct-Moral Turpitude, Dishonesty, Deceit and Fraud)**

20 11. Complaint realleges Paragraph 10 above. Respondent is subject to disciplinary action
21 for unprofessional conduct under Code section 4301, subdivisions (a) and (f), because, from time
22 to time between the months of March and June 2011, Respondent committed acts of a deceit,
23 fraud, dishonesty, gross immorality and moral turpitude. After Respondent discovered that the
24 acts of unprofessional conduct alleged in Paragraph 9 had become known to his employer Raley’s
25 Pharmacy, Respondent attempted to “cover up” his acts of unprofessional conduct by performing
26 the acts alleged below.

1 (a) Took steps to reverse the fraudulent cash register transactions and return the
2 dispensed Cialis 5 mg tablets, as alleged in Paragraph 9, from his personal belongings to the
3 Raley's Pharmacy drug stock.

4 (b) When initially interviewed by Raley's Pharmacy representatives, represented that no
5 patients whom he knew to be "T.B." or M.B. existed, that each was a fictitious person, and that in
6 fact, the aforesaid Cialis prescriptions were for Respondent

7 (c) After his initial interview by Raley's Pharmacy representatives, falsely and
8 fraudulently represented to Raley's Pharmacy representatives that he was authorized by "Jenny",
9 a nurse employed by Patrick Martin M.D., to fill said Cialis prescriptions for "M.B." and "T.B.".

10 (d) After his initial interview by Raley's Pharmacy representatives, falsely and
11 fraudulently represented to the Board's inspector that persons known as Tom Brown and Mike
12 Brown actually did exist, and that the aforesaid Cialis prescriptions were for them, and not for
13 Respondent.

14 (e) After his initial interview by Raley's Pharmacy representatives, falsely and
15 fraudulently represented to the Board's inspector that Respondent submitted a written statement
16 to Raley's Pharmacy representatives setting forth false statements of Respondent's culpability
17 because Raley's Pharmacy representatives wrongfully induced him to do so.

18 THIRD CAUSE FOR DISCIPLINE

19 **(Unprofessional Conduct-False Representations of Fact in Documents)**

20 12. Complainant realleges Paragraph 10 above. Respondent is subject to disciplinary
21 action under Code section 4301, subdivision (g), because on or about June 4, 2011, Respondent
22 knowingly made documents falsely representing the existence or nonexistence of states of fact, as
23 set forth below.

24 (a) Completed a "telephone prescription" form falsely stating that on March 3, 2011,
25 "Jennifer" had phoned in prescriptions for Cialis medication for "M.B. & T.B." to Raley's
26 Pharmacy. In fact, no such telephone prescriptions were made, "T.B." was not then a patient of
27 Dr. Martin, "M.B." was not then a patient of Dr. Martin, "Jennifer" was then on leave and not
28 working for Dr. Martin, and Respondent was not working at Raley's Pharmacy on March 3, 2011.

1 (b) Created and printed prescription labels dated March 4, 2011, for two (2) prescriptions
2 of 30 tablets of Cialis Tab 5 mg , one purporting to be for "T.B." and the other for "M.B.", and
3 purportedly prescribed by Dr. Martin. In fact, no physician or other professional had prescribed
4 Cialis for "T.B." or "M.B.", or caused telephone prescription orders for the medication to be
5 made to Respondent or Raley's Pharmacy on March 4, 2011.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct-Criminal Conviction)**

8 13. Respondent is subject to disciplinary action under Code section 4301, subdivisions
9 (k) and (l) because on or about December 14, 2011, after trial in the case entitled *The State of*
10 *Nevada, plaintiff v. Thomas John Dirkes, defendant*, Ninth Judicial District Court of the State of
11 Nevada in and for the County of Douglas, Respondent was convicted of violating Nevada
12 Revised States section 484C.430, a felony. Respondent's conviction is substantially related to the
13 qualifications, functions and duties of a licensed pharmacist.

14 13. The circumstances of Respondent's criminal conviction are that on or about June 12,
15 2010, Respondent operated a motor vehicle in Douglas County, Nevada, while under the
16 influence of alcoholic beverages. At that time and place, the motor vehicle that Respondent was
17 operating turned over in a crash, and Respondent's passenger was seriously injured.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Pharmacy issue a decision:

21 1. Revoking or suspending Pharmacist License Number RPH 38648, issued to Thomas
22 John Dirkes;

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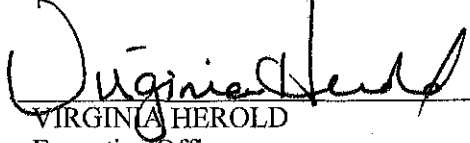
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1 2. Ordering Thomas John Dirkes to pay the Board of Pharmacy the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 10/25/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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